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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

MICHAEL NAVONE,

Defendant.

CASE NO. CR 13-00804 CRB

**UNITED STATES' SENTENCING
MEMORANDUM AND MOTION FOR
DOWNWARD DEPARTURE PURSUANT
TO U.S.S.G. §5K1.1**

The United States respectfully requests that this Court sentence defendant MICHAEL NAVONE to (1) serve eight months of custody, (2) serve three years of supervised release, and (3) pay a criminal fine of \$5,000, a \$200 special assessment, and no restitution. This sentencing recommendation is based on the government's motion for a downward departure of 30 percent from the low end of the Guidelines range for substantial assistance and is consistent with the parties' plea agreement.

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BACKGROUND

Defendant Michael Navone is charged with participating in bid rigging in San Mateo County beginning as early as February 2009 and continuing until in or about January 2011. He is charged with participating in bid rigging in San Francisco beginning as early as October 2009 and continuing until in or about January 2011. Navone was initiated into the conspiracy by Mohammed Rezaian, whom he had known while they both worked at California Mortgage Advisor, a mortgage brokerage. Subsequently, Rezaian invited Navone to work with him purchasing foreclosed properties at auction. Based on Rezaian's track record at the auctions, Navone approached potential investors and raised "approximately four million dollars from passive investors." These funds were held by an entity set up by Navone for the purpose of investing in foreclosed properties, Courthouse Steps II (CHSII). Investors included Navone's father, who supplied \$500,000. Navone, Rezaian and two other partners split 50% of all profits made by CHSII from reselling properties. Presentence Report (PSR) ¶ 15.

When Rezaian and Navone purchased properties together, they vested properties in M&M Partners, LLC. Rezaian also created another entity, Maximo Management. Navone was not a partner in Maximo but was paid 30% of the profit from each investor he recruited. PSR ¶ 16.

When he began attending auctions, Navone became aware of bidders "paying each other to refrain from or to stop bidding at the auctions." Joseph Giraudo was the primary person negotiating the payoff agreements. It was known that Rezaian, Grinsell, Giraudo, Rosenbledt, and Cullinane worked together and were known as "the group" or "the big five." Giraudo made it known to Navone and others that in order for people to purchase property at trustee sales people would have to participate in payoff agreements to stop the bidding. PSR ¶ 17.

Navone became directly involved in negotiating payoffs in 2010. Working with Rezaian, Navone made agreements to stop bidding. He also made and received cash payoffs for not bidding on properties. For example, for the 1815 Edgewood property in Redwood City, Navone negotiated a \$30,000 payoff for Rezaian, Rosenbledt and others with a confidential human source for them (and others) to stop bidding. For 67 Pennhurst in Daly City, Navone picked up a

1 \$12,500 payoff for Rezaian and Grinsell for not bidding on this property from a confidential
2 source and his “investor,” an undercover FBI agent. PSR ¶ 18.

3 Navone profited from purchasing properties at rigged auctions. For example, for 1021
4 Rhode Island in San Francisco, purchased at a corrupt auction on October 5, 2010, Navone split
5 \$34,344 (20% of the total profit of \$171,723.05) from the resale of this property with Rezaian
6 and another conspirator. PSR ¶ 19.

7 On December 17, 2013, Navone was charged by information with bid rigging and mail
8 fraud in San Mateo and San Francisco Counties. Dkt. No. 1. On March 20, 2014, Navone
9 pleaded guilty and began cooperating with the government’s investigation. Dkt. No. 11. On
10 September 20, 2017, by stipulation Navone withdrew from his plea agreement and entered a new
11 bid-rigging-charges only. Dkt. No. 36.

12 As stipulated in his plea agreement, Navone’s volume of commerce is \$2,908,337. PSR
13 ¶ 20.

14 ARGUMENT

15 A. Sentencing Guidelines Calculations

16 1. Criminal History

17 In Paragraph 12 of the plea agreement, the parties agree that Navone’s Criminal History
18 Category is determined by the Court. Dkt. No. 36. The Presentence Report (PSR) calculates
19 Navone’s Criminal History Category as I, based on one criminal history point. PSR ¶¶ 38-41.

20 2. Offense Level

21 The PSR calculates the total offense level as 13, consistent with the plea agreement. PSR
22 ¶ 35. This calculation includes a one-level increase to the base offense level of 12 for conduct
23 involving the submission of non-competitive bids, a two-level increase for a volume of
24 commerce exceeding \$1 million, and a downward reduction of two levels for acceptance of
25 responsibility. PSR ¶¶ 26-35. U.S. Sentencing Guidelines Manual (“U.S.S.G.”) §§2R1.1(b)(1),
26 2R1.1(b)(2)(A), and 3E1.1(a) (U.S. Sentencing Comm’n 2016).

27 Under the Sentencing Guidelines, an offense level of 13 and Criminal History Category
28 of I results in a sentence ranging from 12 to 18 months of imprisonment.

1 **3. Fine and Restitution**

2 The PSR calculates a fine range of \$29,083 and \$145,417, consistent with the plea
3 agreement. PSR ¶ 78; U.S.S.G. §2R1.1(c)(1) (fine range shall be from one to five percent of the
4 volume of commerce, but not less than \$20,000). In the plea agreement, the government agreed
5 to recommend a fine between \$5,000 and \$50,000. Dkt. No. 36. In conjunction with its
6 custodial recommendation, the government recommends a \$5,000 fine. This fine range was
7 initially agreed to by the parties in the original plea agreement, based on the application of the
8 fraud Guidelines, and was carried over to the revised plea agreement.

9 The parties have agreed in Paragraph 11 of the plea agreement to no restitution. Dkt. No.
10 36. This is based on evidence that defendant Navone did not keep any payoff money, but passed
11 that money to a co-conspirator. PSR ¶ 21.

12 **B. Basis for Downward Departure for Substantial Assistance**

13 Pursuant to Section 5K1.1 of the Guidelines, the government moves for a downward
14 departure for substantial assistance to the investigation. The government recommends a 30
15 percent reduction from the low end of the Guidelines range of 12 months, resulting in a sentence
16 of 8 months.

17 The timing, significance, nature and extent of Navone's cooperation warrant a 30 percent
18 reduction. Navone entered his plea agreement pre-indictment on March 20, 2014, and
19 immediately began cooperating in the investigation. His plea may have influenced the decisions
20 of defendants who pleaded after him to also plead guilty and accept responsibility.

21 Additionally, Navone provided two candid interviews with the FBI. During his
22 interviews, Navone provided corroborating information regarding the operation of the
23 conspiracy, the conduct of other conspirators, and various bid-rigging agreements. Also during
24 his interview, Navone provided information after viewing conspiracy documents and audio/video
25 segments. Navone also made himself readily available to the prosecution team in the event he
26 would be needed for further information or potential testimony. For these reasons, a 30 percent
27 downward departure for substantial assistance to the investigation and prosecution of these cases
28 is appropriate.

C. Sentencing Recommendation

The government's recommendation of eight months is reasonable and not greater than necessary in light of the factors articulated in 18 U.S.C. § 3553. The government believes the Court's sentence must reflect the seriousness of the offense, promote respect for the law, and afford adequate deterrence to future bid-rigging offenses and white-collar crime generally.

Given the magnitude of the financial harm caused by Navone's conduct, the government's recommendation, which includes a custodial term, is appropriate and consistent with the commentary in the applicable Guidelines. The commentary makes clear that "prison terms for [Antitrust] offenders should be . . . common" and "alternatives such as community confinement [should] not be used to avoid imprisonment of antitrust offenders." U.S.S.G. §2R1.1, cmt. n. 5 & Background. A fine alone would not serve as an adequate deterrent in the absence of a custodial term. The foreclosure auctions were vulnerable to bid rigging, especially in the aftermath of the foreclosure crisis, when the auctions were flooded with investment opportunities. While Navone did not originate the conspiracy, he joined in willingly. PSR ¶ 20.

The government's recommended sentence also adequately considers the history and characteristics of defendant, including his early decision to accept responsibility, his willingness to pay restitution and cooperate in the investigation, and his minimal criminal history.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court grant the government's motion for a downward departure of 30 percent from the low end of the Guidelines range for substantial assistance and sentence defendant Michael Navone to (1) serve eight months of custody, (2) serve three years of supervised release, and (3) pay a criminal fine of \$5,000, a \$200 special assessment, and no restitution.

Dated: April 19, 2018

Respectfully submitted,

/s/ GABRIEL MARTINEZ

United States Department of Justice
Antitrust Division